

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PEDRO RODRIGUEZ,

Plaintiff,

v.

MCCAIN FOODS USA, INC., a
Maine corporation,

Defendant.

NO. CV-04-262-RHW

**ORDER DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT *INTER
ALIA***

Before the Court are Defendant's Motion for Summary Judgment (Ct. Rec. 10) and related motions, including Defendant's Motion to Strike Memorandum in Opposition to Motion, Statement of Facts (Ct. Rec. 28), Defendant's Motion to Expedite Hearing re: Motion to Strike (Ct. Rec. 27), Defendant's Motion to Strike Memorandum in Opposition to Motion (Ct. Rec. 42), and Defendant's Motion to Expedite Hearing re: Defendant's Motion to Strike (Ct. Rec. 41). For the reasons stated below, the Court denies Defendant's motions.

BACKGROUND

Plaintiff Pedro Rodriguez is suing his former employer, McCain Foods USA, Inc. ("McCain"), for employment discrimination on the basis of age under RCW 49.60, *et seq.*, and for common law retaliatory discharge. *See* RCW 51.48.025; *Wilmot v. Kaiser Aluminum & Chem. Corp.*, 118 Wn.2d 46, 53-54 (1991). Plaintiff filed this case in Superior Court, and Defendant removed to this Court pursuant to 28 U.S.C. § 1441(b). This Court has original jurisdiction under 28 U.S.C. § 1332 because this is a civil action between citizens of different states,

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INTER ALIA * 1

1 and the amount in controversy exceeds \$75,000.

2 STANDARD OF REVIEW

3 Summary judgment is appropriate if the “pleadings, depositions, answers to
4 interrogatories, and admissions on file, together with the affidavits, if any, show
5 that there is no genuine issue as to any material fact and that the moving party is
6 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). There is no
7 genuine issue for trial unless there is sufficient evidence favoring the nonmoving
8 party for a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby,*
9 *Inc.*, 477 U.S. 242, 250 (1986). If the nonmoving party “fails to make a showing
10 sufficient to establish the existence of an element essential to that party’s case, and
11 on which the party will bear the burden of proof at trial,” then the trial court should
12 grant the motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When
13 considering a motion for summary judgment, a court may neither weigh the
14 evidence nor assess credibility; instead, “the evidence of the non-movant is to be
15 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v.*
16 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

17 DISCUSSION

18 The Court has considered the parties’ briefing and argument and finds there
19 are issues of fact that make summary judgment improper. Taking Plaintiff’s
20 evidence as true, the alleged statements of Mr. Korrell, Plaintiff’s direct supervisor,
21 put into issue whether his part in Plaintiff’s dismissal was motivated by a
22 retaliatory animus. A comparison of the record of disciplinary actions against
23 Plaintiff before and after he filed his hearing loss claim with the Department of
24 Labor and Industry similarly raises a question of material fact as to whether
25 retaliation was a motivating factor in his termination, and as to whether his job
26 performance was in fact satisfactory as is necessary to state a prima facie case. For
27 the same reasons, the Court finds dismissal of Plaintiff’s age discrimination claim
28 inappropriate as well. Because there are genuine issues of material fact, the Court

1 does not grant Defendant's motion for summary judgment.

2 Having reviewed the record, heard from counsel, and been fully advised in
3 this matter, **IT IS HEREBY ORDERED** that:

4 1. Defendant's Motion for Summary Judgment (Ct. Rec. 10) is **DENIED**.

5 2. Defendant's Motion to Strike Memorandum in Opposition to Motion,
6 Statement of Facts (Ct. Rec. 28), Defendant's Motion to Expedite Hearing re:
7 Motion to Strike (Ct. Rec. 27), Defendant's Motion to Strike Memorandum in
8 Opposition to Motion (Ct. Rec. 42), and Defendant's Motion to Expedite Hearing
9 re: Defendant's Motion to Strike (Ct. Rec. 41) are **DENIED AS MOOT**.

10 3. The parties' oral motion to extend time to file their joint pretrial order is
11 **GRANTED**. The parties shall file their joint pretrial order on or before October
12 21, 2005, the date of their pretrial conference.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order and forward copies to counsel.

15 **DATED** this 7th day of October, 2005.

16
17 s/Robert H. Whaley

18 ROBERT H. WHALEY
19 CHIEF UNITED STATES DISTRICT JUDGE
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